

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

United States of America, et al,  
Plaintiffs,

v.

JetBlue Airways Corporation,

and

Spirit Airlines, Inc.,  
Defendants.

Case No. 1:23-cv-10511-WGY

**DECLARATION OF MICHAEL D. BATTAGLIA IN SUPPORT OF PLAINTIFFS’  
MOTION TO COMPEL PRODUCTION OF SPIRIT DOCUMENTS  
WRONGFULLY WITHHELD AS PRIVILEGED**

I, Michael D. Battaglia, pursuant to 28 U.S.C. 1746, hereby declares as follows:

1. I am an attorney with the Antitrust Division of the United States Department of Justice, and counsel of record for the United States in this case. I have personal knowledge of the matters recited herein, and if called upon to testify, I could and would testify competently thereto.

2. Spirit’s December 7, 2022 privilege log included a Names Index identifying the names, titles, and organizations for individuals appearing on the log. The Names Index identified 189 different third-party organizations.

3. Attached as Exhibit 1 is list of Bates numbers identifying documents being withheld by Spirit Airlines, Inc. (“Spirit”) on attorney-client privilege grounds that were exchanged with FGS Global (“FGS”) and/or Okapi Partners LLC (“Okapi”).

4. Attached as Exhibit 2 is a true and correct excerpt from Spirit’s Hart-Scott-Rodino premerger notification filing, dated August 12, 2022.

5. Attached as Exhibit 3 is a true and correct copy of a letter sent by Sarah V. Riblet of the Antitrust Division of the U.S. Department of Justice to Andrew Finch of Paul, Weiss, Rifkind, Wharton & Garrison LLP (“Paul Weiss”), counsel for Spirit, dated December 22, 2022.

6. Attached as Exhibit 4 is a true and correct copy of a Spirit presentation entitled “Rejected Proposal from JetBlue is Illusory and Note Superior,” dated May 5, 2022.

7. Attached as Exhibit 5 is a true and correct copy of a letter sent by Andrew Finch of Paul Weiss, counsel for Spirit, to Sarah V. Riblet and Brendan Sepulveda of the Antitrust Division of the U.S. Department of Justice, dated December 28, 2022.

8. Attached as Exhibit 6 is a true and correct copy of Plaintiffs’ First Request for Production of Documents from Defendant Spirit Airlines, Inc., dated March 28, 2023.

9. Attached as Exhibit 7 is a true and correct copy of an email sent from Kate Wald of Paul Weiss, counsel for Spirit, to Michael Battaglia of the Antitrust Division of the U.S. Department of Justice, dated May 1, 2023.

10. Attached as Exhibit 8 is a true and correct copy of a letter sent by Michael Battaglia of the Antitrust Division of the U.S. Department of Justice to Kate Wald of Paul Weiss, counsel for Spirit, dated May 16, 2023.

11. Attached as Exhibit 9 is a true and correct copy of a letter agreement between Sard Verbinnen & Co. (hereinafter “FGS”) and Spirit, dated January 7, 2022. This document was produced in this action at FGS-CID-00044886.

12. Attached as Exhibit 10 is a true and correct copy of a letter sent by Sophia Bertran of Paul Weiss, counsel for FGS, to Sarah V. Riblet and Brendan Sepulveda of the Antitrust Division of the U.S. Department of Justice, dated October 7, 2022.

13. Attached as Exhibit 11 is a true and correct copy of a letter sent by Andrew Cole of FGS to Thomas Canfield of Spirit, attaching an invoice and invoice descriptions detailing services FGS provided to Spirit for January and February 2022, dated March 7, 2022. This document was produced in this action at FGS-CID-00077374.

14. Attached as Exhibit 12 is a true and correct copy of a letter sent by Andrew Cole of FGS to Thomas Canfield of Spirit, attaching an invoice and invoice descriptions detailing services FGS provided to Spirit during the months of March through May 2022, dated June 3, 2022. This document was produced in this action at FGS-CID-00074086.

15. Attached as Exhibit 13 is a true and correct copy of a letter agreement between Okapi and Spirit, dated February 16, 2022. This document was produced in this action at NK-2R-05523037.

16. Attached as Exhibit 14 is a true and correct copy of an excerpt from Spirit’s Schedule 14A Proxy Statement filed with the Securities Exchange Commission, dated May 11, 2022.

17. Attached as Exhibit 15 is a true and correct copy of an email sent from Jason Alexander of Okapi to Thomas Canfield of Spirit, dated May 16, 2022, attaching an addendum to

the February 16, 2022 agreement. This document was produced in this action at OP-CID-00004287.

18. Attached as Exhibit 16 is a true and correct copy of an email sent from Jared Sunshine of Paul Weiss, counsel for Spirit, to Michael Battaglia of the Antitrust Division of the U.S. Department of Justice, dated May 31, 2023.

19. Attached as Exhibit 17 is a true and correct copy of a letter sent by Eyitayo St. Matthew-Daniel of Paul Weiss, counsel for Spirit, to Michael Battaglia of the Antitrust Division of the U.S. Department of Justice, dated June 15, 2023.

I declare under penalty of perjury the foregoing is true and correct.

Executed on August 18, 2022 in Alexandria, Virginia.

/s/ Michael D. Battaglia  
Michael D. Battaglia